

Appendix E

RELEVANT FEDERAL ENVIRONMENTAL LAWS AND REGULATIONS

This appendix describes the relation of the project to key relevant federal environmental laws, regulations, and other requirements. This is not an exhaustive list of all potentially relevant laws, regulations, and policies but a brief description of the key federal environmental requirements that have a bearing on the project.

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 (PL 91-190, NEPA)

This DEIS has been prepared in accordance with requirements of NEPA Section 102 and with the Council of Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500 - 1508), and National Park Service NEPA Guidelines (NPS-12, 1997).

NATIONAL PARK SERVICE ORGANIC ACT 1916

Under the Act the NPS is charged with management of the parks to "conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations".

CALIFORNIA DESERT PROTECTION ACT (CDPA) OF 1994 (PL 103-433)

On October 31, 1994, the CDPA was signed into law. Relevant to this project, this act:

designated one wilderness area (Black Mountain Wilderness) and one wilderness study area (Soda Mountains WSA) on public land administered by the BLM in the CDCA in proximity to this project;

transferred public lands from the BLM to the NPS and established the Mojave National Preserve managed by the NPS; and

designated wilderness areas within the Mojave National Preserve (those in close proximity to the project are identified in the Affected Environment section).

Relevant sections of the CDPA concerning this project include:

Section 501 - The findings relevant to the establishment of the Mojave National Preserve note that the Mojave Desert area "possesses outstanding natural, cultural, historical, and recreational values" meriting statutory designation and recognition as a unit of the National Park System.

Section 511 (c) - "Nothing in this title shall have the effect of terminating any validly issues right-of-way or customary operation, maintenance, repair, and replacement of existing facilities, issued, granted, or permitted for communication cable or lines, which are located on lands included in the Mojave National Preserve, but outside lands designated as wilderness under section 601(a)(3). Such activities shall be conducted in a manner which will minimize the impact on preserve resources."

Section 708 - "The Secretary shall provide adequate access to non-federally owned land or interest in land within the boundaries of the conservation units and wilderness areas designated by this Act which will provide the owner of such land or interest the reasonable use and enjoyment thereof."

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The designations and requirements of the CDPA have been taken into consideration in the development of the action alternatives, the analysis of impacts, and the design of mitigation measures. All of the action alternatives appear to be consistent with the CDPA.

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976 (PL 94-579, FLPMA)

This Act directed the BLM to prepare and implement a comprehensive, long-range plan for the management, use, development and protection of the public lands within the CDCA. This DEIS has taken into consideration the goals and objectives of the CDCA Plan of 1980, as amended. The Proposed Action and Alternative B appear to be in conformance with the existing CDCA Plan, with the exception of the changes to existing routes of travel due to access elimination on public lands. Amendments to the motorized vehicle access element of the CDCA Plan may be necessary to implement either of these action alternatives. Alternative C would require no change to the motorized vehicle access element, and otherwise appears to be consistent with the CDCA Plan.

ENDANGERED SPECIES ACT OF 1973 (PL 93-205), As Amended

No federally listed plant species are known or expected to occur in or adjacent to the project area and thus no impacts to federally listed plant species are expected. One plant species found along the project route is proposed for listing by the USFWS, but is not expected to be affected by the project. One federally listed threatened wildlife species, the desert tortoise, is found in various portions of the project area. The NPS has consulted with the USFWS pursuant to Section 7 of the Endangered Species Act. Based on the analysis in the DEIS, the action alternatives appear to be compatible with the Final Desert Tortoise Recovery Plan.

NATIONAL HISTORIC PRESERVATION ACT OF 1966 (PL 89-665), as Amended, THE ARCHAEOLOGICAL AND HISTORIC PRESERVATION ACT OF 1974 (PL 93-291), AND EXECUTIVE ORDER 11593, PROTECTION AND ENHANCEMENT OF THE CULTURAL ENVIRONMENT, 16 U.S.C. 470 (May 13, 1971)

As required by these Act and orders, cultural resource literature searches, record searches, and field investigations were performed by Peak and Associates, Inc. and Escondido Research Group, Inc. Copies of the cultural resource reports will be sent to the State Historic Preservation Officers (SHPO) in California, Nevada, and New Mexico. The NPS has initiated consultation with the Advisory Council on Historic Preservation as required by Section 106 of the National Historic Preservation Act.

CLEAN AIR ACT (PL 91-604), as Amended 1990)

The air quality control regions crossed by the project area were identified in the Affected Environment section. The only non-attainment area crossed by the project route is the Southeast Desert Intrastate Air Quality Control Region, which is classified as nonattainment for PM10. The project area crosses the Kern County APCD and the Mojave Desert AQMD within this AQCR. Table E-1 provides a summary of federal and state ambient air quality primary standards for the project area.

MDAQMD requires development of a dust control plan for construction activities to be conducted in San Bernardino County. Kern County APCD (KCAPCD) requires a similar dust control plan (Paxson 1996). Clark County, Nevada, requires a dust control permit that contains mandatory control requirements (Miles 1997). The

New Mexico Environmental Department does not require that a dust control permit or plan be filed for activities near Socorro, but does have a general policy to limit fugitive dust emissions (Nelson 1996). Mitigation for the project includes the development of a dust control plan to the satisfaction of the air quality control districts.

The federal Clean Air Act also requires a Conformity Analysis to be conducted for project emissions that exceed conformity thresholds to examine potential project impacts on the implementation of State Implementation Plans (SIPs). Preliminary analysis indicates that PM10 emissions for the Proposed Action in San Bernardino and Kern counties would exceed the conformity threshold of 100 tons for emissions. Thus a conformity analysis would be required to analyze the impact of the project on the implementation of the SIP for the Southeast Air Quality Control Region (ACQR 33), which includes the project segments in San Bernardino and Kern counties. The two action alternatives would have less PM10 emissions than the Proposed Action. However, since no emissions estimates were made for these alternatives, it is unknown at this time whether a conformity analysis might be required in order to implement them.

CLEAN WATER ACT OF 1977 (PL 95-217), as Amended

The project would not include any waste discharges, dredging, or filling activities relevant to Clean Water Act Provisions. No wetlands pursuant to Section 404 would be affected.

Section 404 of the Clean Water Act also requires permits for other actions that may affect waters of the United States. The U.S. Army Corp of Engineers (USACE) Nationwide Permit 12 (Utility Line Backfill and Bedding), replaced individual stream-crossing permits under Section 404. The action alternatives appear to comply with the requirements of Nationwide Permit 12, although this compliance has yet to be confirmed with the USACE. Stream Alteration Agreements from the California Department of Fish and Game (CDFG) will also be required for project activities in California, in compliance with Section 401 of the Clean Water Act for state water quality certification.

The EPA's National Storm Water Program has general permit requirements that require a Storm Water Pollution Prevention Plan (SWPP Plan) be prepared for projects that may result in storm water discharges. Due to the handling of fuels and lubricants with a spill potential, a SWPP Plan will need to be developed and will need to identify the procedures to be used to prevent runoff from entering streams and storm drains.

EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY AND LOW-INCOME POPULATIONS (February 11, 1994)

This Order is designed to focus the attention of federal agencies on the human health and environmental conditions in minority communities and low-income communities. The purpose of the order is to avoid any disproportionate placement of any adverse environmental, economic, social or health impacts from federal actions and policies on minority populations and low-income populations. The project area was reviewed to identify potential minority and low-income populations. No low-income populations were identified that might be affected by the project. Due to the location of the only minority population identified and the nature of impacts related to the project, no disproportionate impacts are expected to minority populations.

WILDERNESS ACT OF 1963 (PL 88-577)

This act was created to define wilderness and establish a National Wilderness Preservation System (NWPS), composed of federally-owned areas designated by Congress. The project would result in some temporary disruption of wilderness areas in the Mojave National Preserve due to mechanical construction equipment and vehicle travel during removal and rehabilitation actions. Due to the proposed use of mechanical equipment, the NPS will need to conduct a minimum tool determination to ensure the use of the minimum necessary amount of equipment to effect removal and rehabilitation in wilderness areas. In the long-term, the project would eliminate man-made improvements and vehicular access to these wilderness areas, which is consistent with the goals of the Wilderness Act.

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (PL 96-510) AS AMENDED BY THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT (PL 99-499); THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976 (PL 94-580) AND THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Removal and rehabilitation actions are not expected to result in the improper handling, disposal, or release of any hazardous material or waste regulated by RCRA or CERCLA. The project is not expected to result in soil or groundwater contamination regulated by CERCLA. The removed cable, which contains lead and copper, will be reclaimed only at approved recyclers. No hazardous waste is currently known to be present in project area soils that may be disturbed by removal or rehabilitation actions. If hazardous waste is encountered, appropriate state or federal officials will be consulted to determine further actions that may be required by RCRA or CERCLA.

AMERICAN INDIAN RELIGIOUS FREEDOM ACT OF 1978 (PL 95-341; 92 STAT 469)

The Act declared the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonial and traditional rites.

ARCHEOLOGICAL RESOURCES PROTECTION ACT OF 1979

The Act provided definitions for archeological resources, required federal permits for their excavation or removal, and set penalties for violators. It provided for the preservation and custody of excavated material, records, and data and for confidentiality of archeological site locations. It encouraged cooperation with other parties to improve protection of archeological resources. The 1988 amendments require development of plans for surveying public land for archeological resources and systems for reporting incidents of suspected violations.

NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT OF 1990

The Act assigns ownership or control of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony that are excavated or discovered of federal land or tribal land after passage of the act to lineal descendants or culturally affiliated native American Groups; establishes criminal penalties for trafficking in remains or objects obtained in violation of the act; provides that federal agencies and museums that receive federal funding must inventory Native American human remains and associated funerary object in their possession or control and identify their cultural and geographical affiliations.

1 **EXECUTIVE ORDER MAY 24, 1996, INDIAN SACRED SITES**

2 Federal land managers shall to the extent practicable, permitted by law and not clearly inconsistent with
3 essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian
4 religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where
5 appropriate agencies shall maintain the confidentiality of sacred sites. Agencies shall ensure reasonable notice is
6 provided of proposed actions or land management policies that may restrict future access to or ceremonial use
7 of, or adversely affect the physical integrity of, sacred sites. Agencies shall comply with Executive memoran-
8 dum of April 29, 1994, "Government to Government Relations with Native American Tribal Governments".
9 This memorandum requires that agencies assess the impact of federal government plans of tribal trust resources
10 and ensure that the tribal government rights and concerns are considered during the development of these plans,
11 programs and activities. Consultation between agencies and tribal officials and religious leaders would be used
12 to address issues of access on public land for religious purposes, inadvertent discoveries of cultural materials,
13 and traditional use of resources.